



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

June 23, 2000

CC:DOM:FS:RSGoldstein
PUB-110464-00

MEMORANDUM FOR NATIONAL DIRECTOR, SPECIALTY TAXES OP:EX:ST:E
Attn: Pamela Oliveras

FROM: Deborah A. Butler *Deborah A. Butler*
Assistant Chief Counsel (Field Service) CC:DOM:FS

SUBJECT: Abatement of Tax Balances in
Audit Reconsideration Cases

By memorandum dated April 13, 2000, the National Taxpayer Advocate (NTA) has proposed a change to the Internal Revenue Manual (IRM) provision regarding the abatement of tax balances in audit reconsideration cases in which the Service has lost, misfiled, or destroyed the administrative file. Specifically, the NTA recommends that the authority to abate tax be provided to field supervisors in audit reconsideration cases if the caseworker documents that the Service is unable to reconstruct the reasons for the assessment of tax, the tax involved is \$ [REDACTED] or less, and a proper "Special Search" request for the return/administrative file has been completed. Your office has requested Counsel's views on the NTA's recommendation. This memorandum responds to your request. 7CE

Current Procedures and NTA's Recommendation

If a taxpayer requests an audit reconsideration, the caseworker is expected to 1) requisition the administrative file, 2) perform a "Special Search" if the initial request indicates that the return/administrative file is lost or misfiled, 3) make an attempt to reconstruct the assessment by requesting IRP information through the appropriate IDRS command codes, and 4) consult with District Counsel regarding the validity of the assessment if the case file cannot be reconstructed. IRM 21.8.1.6.4.13(3)b. Notwithstanding these procedures, the NTA does not believe that all caseworkers consult with District Counsel if the case file is not located. The NTA also believes that District Counsel, when consulted, rarely supports the assessment if the tax is small and the caseworker is unable to explain the basis for

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the assessment, and the information on which the Service based the assessment has been lost, misfiled, or destroyed.

Validity of the Assessment

The Service is authorized and required to assess all taxes, including interest, additional amounts, additions to tax, and penalties, imposed by the Internal Revenue Code which have not been paid by stamp at the time and in the manner prescribed by law. Section 6201(a). The assessment is made by recording the liability of the taxpayer in accordance with the rules and regulations prescribed by the Secretary. Section 6203. Upon the request of the taxpayer, the Service must provide the taxpayer a copy of the record of the assessment, including the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed. Treas. Reg. § 301.6203-1. The Service meets this requirement if it provides the taxpayer with a Form 4340, Certificate of Assessments and Payments. See Geiselman v. United States, 961 F.2d 1, 6 (1st Cir. 1992), and the cases cited therein. Additionally, the assessments shown on the Form 4340 are presumed correct. The taxpayer has the burden of establishing that the assessments are excessive. Id.; see also, United States v. Tharp, 883 F. Supp. 652, 653 (N.D. Fla. 1995); Rossi v. United States, 755 F. Supp. 314, 318 (D. Or. 1990). In other words, "[a]n assessment made by an official within his jurisdiction is prima facie valid." Germantown Trust Co. v. Lederer, 263 F. 672, 676 (3d Cir. 1920), citing United States v. Rindskopf, 105 U.S. 418 (1881). The taxpayer's naked assertion, in an affidavit, declaration, or other statement, that the tax assessed is not owed, is not sufficient evidence to rebut the presumption that the assessment is valid. Prince v. United States, 348 F.2d 746, 748 (2d Cir. 1965); United States v. Sitka, 94-1 USTC ¶ 50,283 (D. Conn. 1994).

Accordingly, a lost, misplaced, or destroyed administrative file does not create a presumption that the assessment is not valid. Unless the taxpayer's request for audit reconsideration is accompanied by credible evidence that will support the claim that the assessment is excessive, the assessment is valid.

Section 6404(c)

The Service, nevertheless, may abate a valid assessment in certain circumstances. Pursuant to section 6404(c), the Service is authorized to abate any liability with respect to a tax if the administration and collection costs involved would not warrant collection of the amount due. Treas. Reg. § 301.6404-1 provides that the Commissioner may issue uniform instructions to district directors authorizing them, to the extent permitted in such instructions, to abate amounts, the collection of which is not warranted because of the administration and collection costs.

On November 12, 1992, the Acting Commissioner approved the criteria for the abatement of small outstanding tax balances. The criteria approved by the Acting Commissioner authorizes the abatement of debit balances of \$[REDACTED] or less. This authorization resulted from a request made by the Assistant Commissioner (Returns Processing) for authority to abate tax and penalties in situations where, other than the modules under review, the taxpayer is compliant in his or her tax obligations and the pursuit of collection activities is not cost effective. Thus, it is not clear that the Commissioner has determined that the collection of a tax in excess of \$[REDACTED] is not warranted because of the administration and collection costs involved in the collection of such amounts.

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The recommendation of the NTA does not provide any empirical data to support a conclusion that the administration and collection costs associated with audit reconsideration cases exceed \$[REDACTED]. In our view, a request to increase the Service's abatement authority under section 6404(c) should not be presented to the Commissioner without the requisite empirical data to support the recommended conclusion. Raising the abatement authority to an arbitrary amount may subject the Service to criticism that is indefensible and avoidable.

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If you have any questions, please contact Rich Goldstein, Field Service Division, at (202) 622-7820.